

# HOUSE BILL No. 1097

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2-289; IC 14-21-1.

**Synopsis:** Burial grounds and cemeteries. Defines "artifact", for purposes of the historic preservation law, as any human made object that is more than 100 years old. Requires a person to contact the department of natural resources to determine whether the ground that will be disturbed is within 100 feet of a recorded burial ground or cemetery. Except for certain coal operations, requires approval of a development plan before disturbing the ground within 100 feet of a burial ground or cemetery.

**Effective:** July 1, 2004.

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**Pierce, Saunders, Welch**

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January 13, 2004, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1097

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 14-8-2-289, AS AMENDED BY P.L.52-2001,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2004]: Sec. 289. "Unit of local government" **has the**  
4 **following meaning:**

5 (1) For purposes of IC 14-12-1, ~~has~~ the meaning set forth in  
6 IC 14-12-1-3. ~~and~~

7 (2) For purposes of **IC 14-21-1 and** IC 14-22-10, ~~means~~ a:

8 (A) county;

9 (B) city;

10 (C) town; or

11 (D) township;

12 located in Indiana.

13 SECTION 2. IC 14-21-1-2 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. As used in this  
15 chapter, "artifact" means an object made or shaped by human  
16 workmanship ~~before December 11, 1816: that is at least one hundred~~  
17 **(100) years old.**

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SECTION 3. IC 14-21-1-8, AS AMENDED BY P.L.46-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) As used in this chapter, "plan" refers to:

- (1) an archeological plan, as described in subsection (b); or
- (2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means a plan for ~~the erection, alteration, an activity that will disturb the land surface or subsurface and that will:~~

- (1) erect, alter, or repair ~~of any~~ a structure;
- (2) construct or modify a utility line or transmission facility;
- (3) drill or change drilling operations for an oil well or a gas well; or
- (4) remove sand and gravel.

SECTION 4. IC 14-21-1-26.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 26.4. (a) **This section does not apply to the following:**

- (1) A surface coal mining and reclamation operation permitted under IC 14-34.
- (2) The repair of a structure.

(b) If a person intends to engage in an activity that will disturb the land surface or subsurface to:

- (1) erect or alter a structure;
- (2) construct or modify a utility line or transmission facility;
- (3) drill or change drilling operations for an oil well or a gas well; or
- (4) remove sand and gravel;

the person, before beginning the activity, must contact the department to determine whether the ground that will be disturbed is within one hundred (100) feet of a recorded burial ground or cemetery.

(c) The department shall respond in writing to a request made under subsection (b) within thirty (30) days.

(d) A person shall attach a copy of the department's written response issued under subsection (c) regarding the proposed activity with any application for a permit that is submitted to the state or a unit of local government.

SECTION 5. IC 14-21-1-26.5, AS AMENDED BY P.L.177-2001,

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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 26.5. (a) **This section applies to a person who intends to disturb the land surface or subsurface to:**

- (1) **erect or alter a structure;**
- (2) **construct or modify a utility line or transmission facility;**
- (3) **drill or change drilling operations for an oil well or a gas well; or**
- (4) **remove sand and gravel.**

Notwithstanding IC 23-14-44-1, this section does not apply to the following:

- ~~(1) A public utility (as defined in IC 8-1-2-1(a)).~~
- ~~(2) A corporation organized under IC 8-1-13.~~
- ~~(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).~~
- ~~(4) a surface coal mining and reclamation operation permitted under IC 14-34.~~

(b) Except as provided in this subsection, ~~subsection (b); subsections (c) and subsection (c); (d)~~, a person may not disturb the ground within one hundred (100) feet of a burial ground or cemetery: ~~for the purpose of erecting, altering, or repairing any structure~~

- (1) without having a development plan approved by the department under section 25 of this chapter; or
- (2) in violation of a development plan approved by the department under section 25 of this chapter.

The department must review the development plan not later than sixty (60) days after the development plan is submitted.

~~(b)~~ (c) A development plan:

- (1) must be approved if a person intends to ~~construct a new structure or alter or repair an existing structure~~ **disturb the land surface or subsurface in a manner** that would significantly impact the burial ground or cemetery; and
- (2) is not required if a person intends to erect, alter, or repair an existing **land or building** structure for an incidental or existing use that would not impact the burial ground or cemetery.

~~(c)~~ (d) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

- (1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under

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1 IC 23-14-67-2 may advise the executive of the municipality on  
 2 whether to approve a development plan.

3 (2) A development plan of a governmental entity other than:

4 (A) a municipality; or

5 (B) the state;

6 requires the approval of the executive of the county where the  
 7 governmental entity is located and does not require the approval  
 8 of the department. However, if the governmental entity is located  
 9 in more than one (1) county, only the approval of the executive of  
 10 the county where the burial ground or cemetery is located is  
 11 required. A county cemetery commission established under  
 12 IC 23-14-67-2 may advise the county executive on whether to  
 13 approve a development plan.

14 (3) A development plan of the state requires the approval of the  
 15 department.

16 ~~(d)~~ (e) A person who recklessly, knowingly, or intentionally violates  
 17 this section commits a Class A misdemeanor. However, the offense is  
 18 a Class D felony if the person disturbs buried human remains or grave  
 19 markers while committing the offense.

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